

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1400 SIXTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

TEL (202) 939-7900 FAX (202) 745-0916

INTERNET www.fw-law.com

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

JEFFREY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

JAMES F. MORIARTY

MATTHEW D. EMMER

LOUIS H. DUPART*

SHARON O'MALLEY MONAHAN**

LAWRENCE R. FREEDMAN

ERIC E. BREISACH***

JOEL D. BONFIGLIO

SETH M. WARNER

JILL KLEPPE MCCLELLAND

REGINA FAMIGLIETTI PACE

CRAIG A. GILLEY

MARK D. PIHLSTROM

BRIAN C. MALADY

THOMAS E. KNIGHT

MARK B. DENBO

CARA E. SHEPPARD

STEVEN J. HAMRICK

KEVIN C. BRENNAN

RICHARD L. DAVIS

SHARI L. WILKOZEK*

LISA CHANDLER CORDELL

JOHN P. MCALLISTER**

DAVID J. LAVAN

AIMEE E. KNAPP

PETER B. SANCHEZ***

KRISTA K. STARK**

DOCKET FILE COPY ORIGINAL

February 13, 2002

RECEIVED

FEB 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

* VA BAR ONLY
** MA BAR ONLY
*** MI AND IL BAR ONLY
* IL BAR ONLY
** LEGISLATIVE, NON-LAWYER
*** NY BAR ONLY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Commissions Commission
236 Massachusetts Ave., N.E.
Suite 110
Washington, D.C.

98-1411

Re: CC Docket No. 01-318 Performance Measurements and Standards for
Unbundled Network Elements and Interconnection

Dear Ms. Salas:

Please be advised that we attempted to make the attached filing on February 12, 2002 via messenger, at the Capital Heights location. We were advised by our messenger that a sign posted on the door stated that the building was closed. The messenger was unaware of the new filing location. At this time, we ask that you accept our filing with the filed date of February 12, 2002. Thank you in advance for your consideration in America's time of extra caution and security.

Sincerely,

Carla B. McClinton

Assistant to Lawrence R. Freedman

Enclosures

File of Originals
ENABODE

0

DOCKET FILE COPY ORIGINAL

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1400 SIXTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

TEL (202) 939-7900 FAX (202) 745-0916

INTERNET www.fw-law.com

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

JEFFRY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

JAMES F. MORIARTY

MATTHEW D. EMMER

LOUIS H. DUPART*

SHARON O'MALLEY MONAHAN**

LAWRENCE R. FREEDMAN

ERIC E. BREISACH***

JOEL D. BONFIGLIO

SETH M. WARNER

February 12, 2002

JILL KLEPPE MCCLELLAND
REGINA FAMIGLIETTI PACE
CRAIG A. GILLEY
MARK D. PIHLSTROM
BRIAN C. MALADY
THOMAS E. KNIGHT
MARK B. DENBO
CARA E. SHEPPARD
STEVEN J. HAMRICK
KEVIN C. BRENNAN
RICHARD L. DAVIS
SHARI L. WILKOZEK*
LISA CHANDLER CORDELL
JOHN P. MCALLISTER**
DAVID J. LAVAN
AIMEE E. KNAPP
PETER B. SANCHEZ***
KRISTA K. STARK**

Via Hand Delivery

Ms Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RECEIVED

FEB 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

* VA BAR ONLY
** MA BAR ONLY
*** MI AND IL BAR ONLY
* IL BAR ONLY
** LEGISLATIVE, NON-LAWYER
*** NY BAR ONLY

**Re: CC Docket No. 01-318/- Performance Measurements and Standards for
Unbundled Network Elements and Interconnection**

Dear Ms. Salas:

Pursuant to the Commission's Notice of Proposed Rulemaking, released November 19, 2001, in docket number 01-318, attached for filing is an original and four (4) copies of the Reply Comments of OpenBand of Virginia, LLC. Please do not hesitate to call me, if you have questions.

Sincerely,

Richard Davis

Richard Davis

Enclosures

cc: Janice Myles - FCC (w/ 3.5" diskette)
Qualex International (Rm CY-B402)

No. of Copies rec'd 0 + 4
LCLABUDE

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

FEB 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Performance Measurements and Standards for)	
Unbundled Network Elements and)	CC Docket No. 01-318
Interconnection)	
)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association for Local)	
Telecommunications Services for Declaratory)	CC Docket Nos. 98-147, 96-98, 98-141
Ruling)	

**REPLY COMMENTS OF
OPENBAND OF VIRGINIA, LLC**

OpenBand of Virginia, LLC ("OpenBand") submits the following reply comments in response to the *Notice of Proposed Rulemaking* issued in the above-captioned dockets on November 19, 2001.

I. Introduction

OpenBand, a wholly owned subsidiary of M.C. Dean, Inc.,¹ is a licensed telecommunications carrier and converged services provider, offering facilities-based, broadband communications packages throughout the Mid-Atlantic. In short, OpenBand offers "one stop shopping" for turnkey, state-of-the-art network engineering and construction coupled with

¹ M.C. Dean, Inc. is a mid-atlantic company with over 50 years of experience in systems design, integration, construction, and life cycle support.

bundled communications solutions including data, voice, video, converged networks, consulting, and OSS services.

In the past, OpenBand's service offerings have been tailored and provided primarily to business and government customers. In the past year, however, OpenBand has been able to extend its network engineering expertise and bundled, broadband service offerings to residential consumers. In particular, OpenBand now teams with land developers and builders to design and build "smart neighborhoods" or "wired communities."

Drawing from the design and engineering expertise of its parent company, OpenBand provides to new residential communities custom designed communications infrastructure, including, among other things, community-wide fiber-optic backbones, fiber-to-the-home connectivity, and a community-dedicated central office housing state-of-the-art voice, video, and data equipment. Through these facilities, OpenBand is able to provide every community resident a complete, pre-wired package of communications service options, including, but not limited to, local and long distance telephone, analog and digital cable television, high-speed, always-on Internet connectivity, digital home security, web-based home automation, and even a community intranet. Moreover, these services come with the convenience and efficiency of a single, monthly bill and a single provider with a demonstrated commitment to cutting-edge technology and service quality.

Through its service offerings, OpenBand believes that it has found a competitive, effective, and vital model for the future growth of broadband and bundled service availability throughout the Mid-Atlantic and, indeed, the entire country. Despite OpenBand's best efforts, however, it has found that the effectiveness and vitality of its business model rests, in part and at least for now, upon the performance quality of the incumbent LEC (i.e., Verizon). In particular,

in order to connect OpenBand's custom customer networks to national and international networks, OpenBand must in many cases rely on Verizon transport and other facilities. In such cases, OpenBand is faced with inordinate and unnecessary delays and uncertainty in obtaining both the facilities, and perhaps more importantly, the information necessary to know that facilities even exist or are available. The purpose of these comments, therefore, is to encourage the Commission to focus on and implement performance standards that will enable and encourage broadband and bundled service models like the model now being pursued by OpenBand.

II. Performance Standards

OpenBand generally supports the performance standard proposals submitted by WorldCom in this proceeding. Beyond this, however, OpenBand encourages the Commission to specifically ensure that WorldCom's proposals or even additional standards, if necessary, are created to facilitate and foster the "wired community" model of broadband and bundled service deployment.

A central element of the "wired community" model is the availability of transport from OpenBand community central offices or other equipment locations to or through Verizon central offices. OpenBand encourages the Commission to adopt the WorldCom and any other necessary performance standards that will ensure the timely and effective availability of such transport to competitive providers like OpenBand.

A related element that OpenBand believes will greatly facilitate and encourage the "wired community" model is dark fiber. In OpenBand's experience, the availability of dark fiber from the ILEC is largely illusory. While the ILEC tacitly purports to make dark fiber available on a nondiscriminatory basis, OpenBand has found that in practice, ILEC dark fiber is guarded behind

a myriad of unnecessary and unlawful ILEC-created obstacles. These obstacles include ILEC refusals to provide timely or usable information on the location of dark fiber in its network. These obstacles also include the ILEC's purported practice of not identifying or making available in-place, spare fiber facilities as dark fiber simply because the ILEC has left the fiber un-terminated (or at some other stage of installation that leaves the fiber one simple step away from use) until the ILEC desires to use it. In effect, OpenBand's right to utilize ILEC dark fiber to connect "wired communities" to public switched networks is rendered meaningless if OpenBand is given no timely or effective mechanism to determine where the dark fiber is. Similarly, the ILEC can completely undercut its dark fiber performance responsibilities if it can simply insulate spare fiber in its network from unbundling obligation by not terminating it. For these reasons, OpenBand encourages the Commission to create and enforce stringent and clear dark fiber performance metrics to address these problems and to make dark fiber a real option for facilitating broadband deployment.²

A final element of the "wired community" model that OpenBand wishes to focus the Commission's attention on is access to ILEC remote terminals. ILECs are rapidly deploying equipment and technology in remote terminal-based network configurations, largely in order to facilitate roll-outs of DSL and related advanced services technologies. While existing Commission rules and orders give competitive providers like OpenBand rights to access these

² These issues are exemplary of an unfortunate ILEC practice which pays lip service to the notion of compliance with this Commission's orders requiring critical network elements to be made available, while at the same time making a joke of those requirements by layering the purported availability of such elements with so many conditions and caveats as to effectively render them useless. The dark fiber issue is a good example. Dark fiber was a key competitive linchpin of the "UNE Remand" order back in December, 1999. Yet, it appears that the number of actual dark fiber orders fulfilled by the incumbents is minimal, despite the strong interest from the competitive community in ordering such elements. The Texas Public Utility Commission has now, on at least two occasions, ordered Southwestern Bell Telephone Company to eliminate inappropriate conditions on the availability of dark fiber. In the second such case, the Commission stated its concern that competitors were required to keep coming back in expensive and burdensome interconnection arbitration proceedings to obtain what should have been their right in the first place. This is precisely the kind of competitive void that the Commission here should now step up to fill.

new facilities, OpenBand has found that remote collocation or other access processes and procedures created by the ILEC are unduly complicated, costly, and dilatory. Indeed, similar to the framework of obstacles created for dark fiber, ILEC remote terminal access offerings render access to these critical network points largely illusory and prohibitive to competitive providers like OpenBand. OpenBand, therefore, encourages the Commission to target ILEC collocation and other remote terminal access arrangement offerings for clear, stringent, and enforceable performance metrics in order to make such arrangements real options for facilitating the deployment of broadband and bundled services by competitive providers.

III. Conclusion

OpenBand believes that national ILEC UNE and interconnection performance standards will greatly improve the state of competitive telecommunications markets. In creating and implementing such standards, OpenBand encourages the Commission to include standards and metrics that are specifically targeted to facilitating what OpenBand believes to be the future of residential broadband and bundled service deployment: wired communities.

In sum, OpenBand reiterates that the promising competitive area of “wired communities” will significantly and particularly benefit from the availability of transport and fiber options. Wired community providers install the extensive and expensive infrastructure to wire the last mile and provide true broadband solutions, offering perhaps the best hope of increasing the number of residential broadband subscribers. One of the key bottleneck elements that the Commission needs to address to promote this important broadband solution is the availability of transport, and dark fiber.

OpenBand looks forward to offering further details in the course of this proceeding.

Respectfully submitted,

Richard Davis

Lawrence R. Freedman

Richard L. Davis

FLEISCHMAN & WALSH, L.L.P.

1400 Sixteenth Street, N.W., Suite 600

Washington, DC 20036

(202) 939-7900

(202) 588-0095 (fax)

Counsel for OpenBand of Virginia, LLC